

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Lee and Karla Mylenbusch,
Petitioner-Appellant,

v.

Marion County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-63-0138
Parcel No. 06064-000-00

On January 13, 2011, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Lee and Karla Mylenbusch, were self-represented and the appeal takes place without hearing. Marion County Board of Review designated Christopher Pose, Lillis, O'Malley, Olson, Manning, Pose & Van Dike, LLP, Des Moines, Iowa, as its representative. The Appeal Board now having examined the entire record, written testimony, and being fully advised, finds:

Findings of Fact

Lee and Karla Mylenbusch, owners of property located at 1573 Pratt Drive, Knoxville, Iowa, appeals from the Marion County Board of Review decision reassessing their property. The real estate was classified as residential for the January 1, 2011, assessment and valued at \$122,020; representing \$24,260 in land value and \$97,760 in improvement value.

Mylenbusch protested to the Board of Review on the ground that there was an error in the assessment under Iowa Code section 441.37(1)(d). The error that Mylenbusch claimed is that the property is misclassified and should be agricultural realty instead of residential property. The Board of Review denied the protest.

Mylenbusch then appealed to this Board on the same ground. Mylenbusch claims the value should be put back to agriculture classification and the old value. Mylenbusch did not contest the value of the buildings.

The subject property contains seven acres of land, dwelling, and structures, and valued at \$122,020. The Mylenbusches own 1.66 acres of adjoining land that was not part of this protest. However, they included that parcel value of \$7960 to arrive at a total value of the property of \$129,980. This Board will only consider the subject property of seven acres and assessed at \$122,020.

Mylenbusch presented to the Board of Review and to this Board, photographs of the farm land. In a letter to the Board of Review, they stated that the land has always been agricultural land and is still used as agricultural land and requested to be assessed back to agricultural land.

The Marion County Assessor, Drew Sanders, submitted as part of the certified record a letter, addressed to this Board, dated July 19, 2011, stating the position of the Board of Review. This Board notes the letter is after the Board of Review session.

The letter from the assessor indicates that one of the tests used by the assessor's office is if the property is less than ten acres. In this case, both parcels are about 8.4 acres. This is the assessor's office guide not the Board of Review's and is based on the fact that to receive an agricultural tax credit, you must have ten acres or more. His office also looked at the use of the property. The only use determined by the Board was hay. The Board of Review admitted they did not review the property; they reviewed aerial photographs and determined it looked like they may have hay planted. The Board felt like the "primary use" was residential.

The July, 2011, letter indicates the classification was changed in 2009, and Mylenbusch did not appeal until 2011. Sanders' letter states the Mylenbusches did not file a Schedule F Income document or FSA documents.

Reviewing the record, we find that the ten acres or less test used by the assessor's office as they stated in Sanders' letter is, in fact, not a statutory guideline. This Board gives that test no weight. The fact that they only harvested hay is not a fact of incidental use. This Board gives that test no weight. The fact that Mylenbusches did not file a Schedule F or FSA documents also is not a statutory guideline and, therefore, not a statutory requirement. The fact that the property was reclassified in 2009 and the Mylenbusches did not appeal until 2011 does not mean they lost the right to appeal the 2011 assessment. The only issue for this Board is did Mylenbusch prove by a preponderance of evidence that the "primary use" is in a "good faith" effort being made for "intended profit."

Although it appears Mylenbusches have farmed the subject property in the past and may still be farming the subject property. We find the record lacks evidence of intended profit or any detailed information regarding the primary use. Therefore, we must affirm the assessment determined by the Marion County Board of Review; however, not for the reasons stated by the assessor's office.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

The Mylenbusches assert the property is misclassified (error) and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r.701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” *Id.* r. 701-71.1(1). “Under administrative regulations adopted by the...Department...the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the basis of its primary use.” *Svevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. Iowa Administrative r. 701-71.1(1).

“Agricultural real estate shall include all tracts of land the improvements and structures located on them which are in good faith used primarily for agricultural purposes” except buildings which are primarily used or intended for human habitation. *Id.* r. 701-71.1(3).

Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Id.

If the Mylenbusches’ property is not classified agricultural, it must be classified residential.

Residential realty is defined as the following:

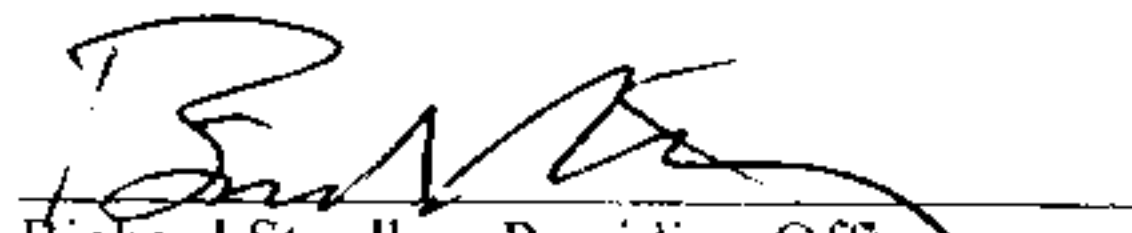
Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings are used primarily or intended for human habitation shall include the dwelling as well as the structures and improvements used primarily as part of, or in conjunction with, the dwelling. This included but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds

for household goods. Residential real estate on agricultural land shall include only buildings as defined by this subrule.

In the opinion of the Appeal Board, the evidence does not support the claim that the property is misclassified as authorized by Iowa Code section 441.21. We, therefore, affirm the assessment of the Lee and Karla Mylenbusch property as determined by the Board of Review for January 1, 2011, to be classified as residential realty.

THE APPEAL BOARD ORDERS the classification of the property is residential. The January 1, 2011, assessment of the property is \$122,020 and allocated \$24,260 for land, and \$97,760 for improvement is affirmed.

Dated this 19 day of March 2012.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-19</u> 2012.	
By	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	